

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

FILED
U.S. DISTRICT COURT
DISTRICT OF TEXAS

MAR - 5 2008

DAVID J. MALAND, CLERK

UNITED STATES OF AMERICA

§

BY

DEPUTY _____

v.

§

CASE NO. 4:06CR287(1)

§

EFRAIN CARDENAS

§

§

**REPORT AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE**

Pending before the Court is the request for revocation of Defendant's supervised release. After the District Court referred the matter to this Court for a report and recommendation, the Court conducted a hearing on February 19, 2008 to determine whether the Defendant violated his supervised release. The Defendant was represented by Robert Arrambide. The Government was represented by Randy Blake.

On July 21, 2005, the Defendant was sentenced by the Honorable Hayden Head, United States District Judge, to 12 months and 1 day imprisonment, followed by a 3-year term of supervised release for the offense of Aiding and Abetting the Possession with Intent to Distribute 1,128 Grams of Marijuana. On January 13, 2006, Defendant was released from custody and ordered to commence service of a 3-year term of supervised release. The case was reassigned to the Honorable Richard A. Schell, United States District Judge, on October 24, 2006.

On January 18, 2008, the U.S. Probation Officer filed a Petition for Warrant or Summons for Offender Under Supervision (Dkt. 4). The petition asserted that Defendant violated the following conditions of supervision: (1) Defendant shall not commit another federal, state, or local crime; (2) Defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute,

or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician; (3) Defendant shall refrain from any unlawful use of a controlled substance, and Defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court; and (4) Defendant shall participate in a program of testing and treatment for drug abuse, under the guidance and direction of the U.S. Probation Office, until such time as Defendant is released from the program by the probation officer.

The petition alleges that Defendant committed the following violations: (1) Defendant was arrested on November 18, 2007 in Denton County for Driving While Intoxicated, a Class B Misdemeanor, and those charges are pending against him; (2) Defendant submitted urine specimens on July 5 and 9 and September 14, 2006 and September 27 and December 18, 2007, which tested positive for cocaine; (3) Defendant failed to report for scheduled counseling at Sharp Focus Center for the month of December 2007 and has not reported since November 14, 2007; and (4) Defendant failed to report, as instructed, to Sharp Focus Centers on January 9, 2008. The Government further alleged that during a home visit on January 8, 2008, Defendant verbally admitted to recent use of marijuana.

Prior to the Government putting on its case, the Defendant entered a plea of true to violations (2) through (4). Defendant did not enter any plea of true as to the pending charges for Driving While Intoxicated. At the hearing, the Court recommended that Defendant's supervised release be revoked.

RECOMMENDATION

The Court recommends that the District Court revoke the Defendant's supervised release. Pursuant to the Sentencing Reform Act of 1984, the Court recommends that the Defendant be

committed to the custody of the Bureau of Prisons to be imprisoned for a term of ten (10) months, to run consecutively with any other sentence being served, with no supervised release to follow. The Court further recommends that Defendant's term of imprisonment be carried out in the Bureau of Prisons facilities located in Seagoville, Texas or Fort Worth, Texas.

SIGNED this 4th day of March, 2008.



DON D. BUSH
UNITED STATES MAGISTRATE JUDGE